IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL WRITS No. 3500 of 2004

BAGHA RAM & ORS
V/S
B.O.R. & ORS

Mr. JR BENIWAL, for the appellant / petitioner

Date of Order : 23.8.2004

HON'BLE SHRI N P GUPTA,J.

ORDER

By the impugned order, the Board of Revenue has accepted the reference, and thereby set aside the mutation no.5 and 155, and has also directed the land to be recorded in the name of Mandir Shri Mallinathji in the revenue records.

It is contended by the learned counsel for the petitioner that the Mandir Shri Mallinathji was a Doli, while khatedar whereof was Khima, as is clear from Annexure-2, which is said to be Parcha Tajbij Lagan, and Annexure-3, which is the Jamabandi of Samvat 2009 and 2011. It is contended that in that view of the matter, since Khima was the khatedar with resumption of Jagir, he acquired khatedari rights, and could sell the land, and therefore, the mutation could not be set aside.

I have considered the submissions and have perused the impugned orders.

A look at Annexure-1, the order of the Collector, shows that before him, the petitioners submitted a reply, wherein a stand was taken that the land has never been a Doli land, rather Khima was the Upbhokta, and therefore, he had full right to sell. Likewise, the present petitioner no.1 had also taken the stand that the land was of khatedari of Khima, and he had a right to sell. It has been held by the Collector, in the order, Annexure-1, making reference, that the land was recorded as Doli, and Khima was only mentioned as Upbhokta, but then, Upbhokta has no right to have the land recorded in his own name without any legal order, nor does he have any right to sell the land. With these findings, reference was made for setting aside the mutations, and the Board of Revenue has accepted that reference.

In my view, the impugned order does not suffer from any error requiring interference by this Court in writ jurisdiction. It was not shown, either before the learned Courts below, or before this Court, that before the land was sold by Khima, he was ever conferred any khatedari rights over the land, so as to entitle him to alienate the land. In that view of the matter, when the land was of the temple Doli

Mandir Shri Mallinathji, the Upbhokta cannot sell the land, and the reference has rightly been accepted. It is a different story that the order of the Board of Revenue is as old as 21.4.99, and the present writ petition has been filed only on 22.3.02, not even whispering any explanation for this long delay, therefore, even on the ground of latches as well, the writ petition is liable to be dismissed.

Thus, taken from any stand point, I do not find any sufficient ground to entertain the writ petition. The same is, therefore, dismissed summarily.

(N P GUPTA),J.

/tarun/